

December 22, 1953
Letter Opinion No. 53-175-L

The Honorable Laura McRae
State Representative
929 East Coronado Avenue
Phoenix, Arizona

LAW LIBRARY ARIZONA ATTORNEY GENERAL

Dear Mrs. McRae:

This is in answer to your oral request for our opinion upon the following question: "Does the Constitution prohibit the establishment of a School of Engineering at the Arizona State College, at Flagstaff, or at the Arizona State College, at Tempe?"

An examination of the Arizona Constitution reveals that Article 11, Section 1, must be considered in order to answer this question. Article 11, Section 1, provides as follows:

"§ 1. (Public school system.)--The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate state institutions of such character). The legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb, and blind."

A reading of the above quoted constitutional provision reveals that the Legislature has been given broad general powers to establish schools at locations other than the University of Arizona for the teaching of technical subjects. There appears to be no restriction in the Constitution as to the specific subjects which may be taught in the normal schools (both of the colleges mentioned in your question are, in fact, normal schools within the meaning of Article 11, Section 1, supra). Nor is there any constitutional provision or restriction as to the type of degree which may be conferred by the various colleges in the State.

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In the case of BOARD OF REGENTS v. SULLIVAN, (1935) 45 Ariz. 245, 42 P. 2d 619, our Supreme Court made the following observations, at page 255 of Arizona Reports:

"Certain of our institutions of higher education were such before Arizona became a state, and these were recognized by the Constitution as a part 'of a general and uniform public school system,' for the establishment and maintenance of which the legislature was directed to enact laws. Section 1, art. 11. The government of these institutions is conferred on certain elected and appointed officials (section 2, Id.), whose 'powers and duties . . . shall be such as may be prescribed by law' (section 3, Id.). These constitutional provisions not only authorize but require special legislation for the maintenance and government of these pre-existing state institutions. They were made by the Constitution objects for the special care and consideration of the legislature.
* * *

Although the instant inquiry was not directly presented in the Sullivan case, supra, the language used by the court is indicative of the intent of the above constitutional provision, i.e., that the schools mentioned were made objects for special care and consideration by the State Legislature. In view of the Sullivan case, supra, and the plain language contained in Article 11, Section 1, it is the opinion of the Department of Law that the Legislature of the State of Arizona, by proper legislative enactment, could provide for the establishment of a School of Engineering at either the Arizona State College, at Flagstaff, or at the Arizona State College, at Tempe.

Yours very truly,

JPB:RM

JAMES P. PARTLETT
Assistant to the
Attorney General